

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2940**

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**Introduced by Assembly Member De Leon**

February 22, 2008

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~~An act to amend Section 978.6 of the Government Code, relating to government tort claims. An act to add Title 25 (commencing with Section 100000) to the Government Code, relating to retirement.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2940, as amended, De Leon. ~~Judgments against public entities: bonds.~~ *Retirement: California Financial Advantage Account Program.*

*Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.*

*This bill would create the California Financial Advantage Account Program, to be administered by the Public Employees' Retirement System (PERS), with the intent of promoting greater retirement savings for California private employees in a convenient, low-cost, and portable manner. The bill would require PERS, under this program, to offer one or more individual retirement accounts or individual retirement annuities to eligible employees of all eligible employers, as defined, who participate. The bill would require an employee to have an annual income at or below 400% of the federal poverty level to be eligible. The bill would require PERS in initiating and administering the program to, among other things, employ staff and 3rd-party administrators, as necessary, collaborate with various entities in the private sector, recover expenses from contributions or investment returns, as specified, and create a process to allow an employer to forward employee contributions*

to the program through the Employment Development Department system currently used to collect payroll taxes. The bill would require PERS to make reports to the Legislature and to employers on the progress and status of the program. The bill would require PERS to allow employers without retirement plans to contribute and to match employee contributions. The bill would require PERS to obtain the necessary approvals from federal authorities for the program's implementation in order not to jeopardize the status of existing retirement programs for public employees, and would provide that the program will not be made available until all approvals that PERS deems necessary are obtained. The bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, employees of, and investment managers under contract with, PERS in connection with any decision or action related to the administration of the program. The bill would also make a statement of findings.

~~Existing law authorizes any local public entity that levies taxes or assessments to issue bonds to pay judgments against the public entity. The governing board of the local public entity is authorized, by resolution, to stop the further issue or sale of any unsold portion of such a bond issue, thereby voiding the remaining unsold portion.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares the following:*
- 2     (a) *Currently, 6 million Californians, 41 percent of the state's*
- 3     *workforce, work at a job that does not offer them a pension or*
- 4     *retirement savings plan to supplement social security.*
- 5     (b) *Social security payments alone, which average \$901 per*
- 6     *month in California, will not sustain Californians in their*
- 7     *retirement. Seniors without savings may be more likely to require*
- 8     *government assistance with housing, medical care, and other*
- 9     *necessities.*
- 10    (c) *Though investments in savings accounts have increased over*
- 11    *time, investments from low-income small businesses, or*

1 *short-tenured and transient employees, are strikingly low and have*  
2 *not increased at the same rate.*

3 *(d) Nationally, two out of three low-wage workers lack access*  
4 *to an employer-sponsored retirement plan, while only one in four*  
5 *high-wage workers do. Nearly 65 percent of low-income workers,*  
6 *those earning less than \$40,000 per year, do not participate in*  
7 *employer plans, according to the Congressional Budget Office.*

8 *(e) Only 26 percent of full-time, full-year private sector workers*  
9 *in businesses with fewer than 25 employees participated in a*  
10 *pension plan in 2004, compared with 69 percent of those employed*  
11 *by companies with 500 or more employees. Complexity and cost*  
12 *of administering retirement systems may prevent small companies,*  
13 *in comparison to larger corporations, from creating retirement*  
14 *plans for their employees.*

15 *(f) Low investment participation rates in retirement plans can*  
16 *also be attributed to a worker losing coverage access after moving*  
17 *into a new job with a new business.*

18 *(g) Workers today are spending more than they are saving,*  
19 *relying more on credit, and thus accruing debt and putting their*  
20 *future financial security at risk. Nationally, the personal savings*  
21 *rate for individuals has fallen to 0.5 percent of income for 2007.*  
22 *At this rate, even with social security benefits, Californians will*  
23 *not be able to afford retirement.*

24 *(h) California workers without access to an employer-sponsored*  
25 *retirement plan need a seamless, lifelong savings system, providing*  
26 *them with the opportunity to build their assets and helping them*  
27 *to attain their financial stability and future through a secure,*  
28 *portable savings account.*

29 *(i) In creating this system, California would supplement existing*  
30 *savings options, at no cost to taxpayers.*

31 *(j) The California Financial Advantage Account Program is*  
32 *hereby established by this act to promote expanded retirement*  
33 *security for working Californians' employers' sponsorship of*  
34 *retirement plans for their employees.*

35 *SEC. 2. Title 25 (commencing with Section 100000) is added*  
36 *to the Government Code, to read:*

1           *TITLE 25. CALIFORNIA FINANCIAL ADVANTAGE*  
2                                   *ACCOUNT*

3  
4       100000. *For purposes of this title:*

5       (a) *“Board” means the Board of Administration of the Public*  
6 *Employees’ Retirement System.*

7       (b) *“Eligible employer” means a person or entity engaged in*  
8 *a business, industry, profession, trade, or other enterprise in the*  
9 *state, whether for profit or not for profit, but excluding the state,*  
10 *any county, any municipal corporation, or any of its units or*  
11 *instrumentalities, and that satisfies the requirements to establish*  
12 *or participate in a SIMPLE plan or a payroll deposit IRA*  
13 *arrangement. An eligible employer shall only provide services*  
14 *under the program to eligible employees. An eligible employer*  
15 *does not include any employer to the extent that the employer*  
16 *replaces a preexisting retirement plan with a plan provided for by*  
17 *this title.*

18       (c) *“Eligible employee” means a person who is an employee*  
19 *of an eligible employer and who has an annual income at or below*  
20 *400 percent of the federal poverty level.*

21       (d) *“ERISA” means the Employee Retirement Income Security*  
22 *Act of 1974, as amended.*

23       (e) *“IRA” means an individual retirement account or individual*  
24 *retirement annuity under Section 408 or 408A of the Internal*  
25 *Revenue Code of 1986.*

26       (f) *“Participating employer” means an eligible employer that*  
27 *maintains or participates in a plan or payroll deposit IRA*  
28 *arrangement provided for by this title for eligible employees.*

29       (g) *“Payroll deposit IRA arrangement” means an arrangement*  
30 *by which an employer makes its payroll system available to*  
31 *employees as a conduit for transferring salary reduction*  
32 *contributions to IRAs.*

33       (h) *“Program” means the California Financial Advantage*  
34 *Account Program established by this title.*

35       (i) *“SIMPLE plan” means a SIMPLE IRA program under*  
36 *Section 408(p) of the Internal Revenue Code of 1986.*

37       (j) *“System” means the Public Employees’ Retirement System.*

38       100002. (a) *There is hereby established in the system a*  
39 *retirement savings program known as the California Financial*  
40 *Advantage Account with the intent of promoting greater retirement*

1 *savings for California private employees in a convenient, low-cost,*  
2 *and portable manner. The California Financial Advantage Account*  
3 *is a voluntary, universal, portable retirement account for California*  
4 *private employees.*

5 *(b) The program shall include, as determined by the system,*  
6 *one or more of the following components:*

7 *(1) One or more SIMPLE IRA plans for the employees of*  
8 *participating employers.*

9 *(2) One or more payroll deposit IRA arrangements for the*  
10 *employees of participating employers.*

11 *(3) Other IRAs for employees of participating employers.*

12 *(c) The elements of the program established pursuant to*  
13 *subdivision (b) shall include, as the system may determine:*

14 *(1) Prototype or master and prototype plans or IRAs.*

15 *(2) Multiple employer plans.*

16 *(3) Group administrative service arrangements that allow*  
17 *eligible employers to achieve economies of scale with respect to*  
18 *their retirement savings arrangements relating to investment,*  
19 *accounting, payroll processing, employee communications, and*  
20 *investor education.*

21 *(4) Group investment vehicles for the plans or IRAs.*

22 *(5) Custodial or trustee arrangements for payroll deposit*  
23 *programs or for other plans or IRAs.*

24 *100004. The system shall initiate, implement, maintain, and*  
25 *administer the program and, in these capacities, shall:*

26 *(a) Employ staff and retain and contract with private financial*  
27 *institutions, other financial and service providers, consultants,*  
28 *third-party administrators, and other professionals as necessary.*

29 *(b) Collaborate and cooperate with private financial institutions,*  
30 *service providers, business, financial, trade, membership, and*  
31 *other organizations to the extent necessary or desirable for the*  
32 *effective and efficient implementation of the program and to*  
33 *maximize outreach to employers and individuals.*

34 *(c) Cause expenses incurred to initiate, implement, maintain,*  
35 *and administer the program, to be paid from contributions to, or*  
36 *investment returns or assets of the program or plans or IRAs*  
37 *established under the program, to the extent permitted under*  
38 *federal law, except for expenditures that are provided for through*  
39 *appropriations from the Legislature.*

1     (d) Facilitate compliance by the plans and IRAs established  
2     under the program with all applicable requirements for the plans  
3     under the Internal Revenue Code of 1986, including tax  
4     qualification requirements, or, where applicable, ERISA, or any  
5     other applicable law and accounting requirements, including  
6     providing or arranging for assistance to plan sponsors and  
7     individuals in complying with applicable law and tax qualification  
8     requirements in a cost-effective manner.

9     (e) Cause the plans and IRAs established under the program to  
10    be designed, established, and operated:

11    (1) In accordance with best practices for retirement savings  
12    vehicles.

13    (2) To maximize participation, saving, and sound investment  
14    practices, including the encouragement of automatic features,  
15    including, but not limited to, automatic enrollment and investment.

16    (3) With simplicity, ease of administration, and portability of  
17    benefits.

18    (f) Seek to minimize costs by assisting or facilitating the pooling  
19    of small employers and individuals in purchasing retirement  
20    savings plans, arrangements, and investments, and through  
21    economies of scale, standardization, designation of investment  
22    types, and other measures.

23    (g) Arrange for collective, common, and pooled investment of  
24    assets of the retirement savings plans and IRAs, including  
25    investment in conjunction with other funds with which those assets  
26    are permitted to be collectively invested, with a view to saving  
27    costs through efficiencies and economies of scale, but only to the  
28    extent that these collective investment arrangements would not  
29    jeopardize the exemption from ERISA of the plans maintained for  
30    state and local government employees and would otherwise comply  
31    with applicable law and conditions for favorable tax treatment.

32    (h) Disseminate to the citizens of California educational  
33    information concerning saving, investment, planning for retirement,  
34    and financial planning.

35    (i) Disseminate information concerning the tax credits available  
36    to small business owners for establishing new retirement plans  
37    and the federal saver's tax credit available to moderate and lower  
38    income households for saving in plans and IRAs.

39    (j) Submit progress and status reports to the Legislature and to  
40    participating employers and individuals.

1     (k) If necessary, determine the eligibility of an employer,  
2     employee, or other individual to participate in the program.

3     (l) Create for employees who want to contribute a portion of  
4     their paycheck to a plan or account offered by the program a  
5     process by which they are able to notify their employers, either at  
6     the time of hiring or thereafter; and allow the employer to forward  
7     the employee contribution to the program through the Employment  
8     Development Department system currently used to collect payroll  
9     taxes.

10    (m) Allow employers to use the program to contribute to the  
11    account on their employees' behalf or match their employees'  
12    contribution.

13    100006. The system shall obtain the necessary approvals,  
14    rulings, opinions, determinations, or confirmations from federal  
15    authorities or agencies, including the Internal Revenue Service,  
16    Department of Labor, or Securities and Exchange Commission.  
17    It is intended that the plans and IRAs established under the  
18    program shall adhere to all applicable standards and requirements  
19    under federal law regulating the operation of retirement plans  
20    and the offering, sale, or distribution of securities under those  
21    plans, without regard to any exemption under federal law available  
22    to a pension plan maintained by a governmental employer, and  
23    the availability of this program shall be contingent on the  
24    requirements of this section.

25    100008. No claim, tax lien, or other right of set-off of the state  
26    or any of its agencies or instrumentalities shall apply against any  
27    funds or assets held for the benefit of individuals in a plan or IRA  
28    under the program or coming into the possession of a state official  
29    under the program.

30    100010. Present, future, and former board members of the  
31    Public Employees' Retirement System, jointly and individually,  
32    state officers and employees, and investment managers under  
33    contract with the Public Employees' Retirement System shall be  
34    indemnified from the General Fund and held harmless by the State  
35    of California from all claims, demands, suits, actions, damages,  
36    judgments, costs, charges, and expenses, including court costs and  
37    attorney's fees, and against all liability, losses, and damages of  
38    any nature whatsoever that they shall or may at any time sustain  
39    by reason of any decision or action related to the initiation,  
40    implementation, maintenance, or administration of the program.

1     100012. *This program shall be made available only upon*  
2     *receipt of all approvals that the system deems necessary for its*  
3     *implementation.*

4     ~~SECTION 1. Section 978.6 of the Government Code is~~  
5     ~~amended to read:~~

6     ~~978.6. The board may by resolution adopted by two-thirds vote~~  
7     ~~of all its members declare that no part of a described bond issue~~  
8     ~~authorized pursuant to this article that remains unsold shall be~~  
9     ~~issued or sold. When the resolution takes effect, the bonds~~  
10    ~~described in the resolution that remain unsold are voided.~~